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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,670	03/28/2000	FREDERIC BONTE	00060	7942

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DENNISON, SCHULTZ & DOUGHERTY
1745 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

EXAMINER

SHARAREH, SHAHNAM J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/09/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/508,670

Applicant(s)

BONTE ET AL.

Examiner

Shahnam Sharareh

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 17-25, 35-39 and 70.Claim(s) withdrawn from consideration: 26-34, 42-69.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons of record. During the interview on June 23, 2003 Examiner specifically described the scope of the claims as written. Accordingly, Examiner clarified that the instant claims do not require ellagic acid to achieve increased collagen VII synthesis. Applicant argues that the intended use of claimed methods namely, "improving dermis-epidermis cohesion " is not taught in the cited reference. However, it is well settled in patent law that in process claims, the intended use must result in a manipulative difference as compared to the prior art. In re Otto 136 USPQ 458, 459 (CCPA 1963). Therefore, Arami's mere administration of ellagic acid would achieve the instantly claimed method of improving dermis-epidermis cohesion" because all it takes to achieve this end result is to apply ellagic acid to skin and Arami teaches such step. Furthermore, the instant recitation of "ellagic acid compound sufficient to increase synthesis of collagen VII by keratinocytes of the dermis and thereby improve cohesion of the dermis and epidermis," is not directly linking the pharmacological effects of ellagic acid to the end clinical results, because it is merely viewed as a limitation that defines the quantitative amount of ellagic acid in the employed method. Again, as reasoned on the record, the instant compositions are not solely limited to methods of administering compositions consisting of ellagic acid or derivatives thereof, therefore, any other compounds that can provide for "collagen VII synthesis" within the instantly employed composition renders the instant claims obvious when combined with ellagic acid. In the instant case, the combined teachings of the references provide for the claimed sufficient amounts of ellagic acid, because Arami uses amounts within the instantly claimed ranges. In addition, the secondary references provide for other components of the instant compositions that can improve collagen VII synthesis. Subsequently, the combined teachings of the references meets the limitations of the instant claims. .